IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1483 OF 2005

Salim Ibrahim Wadkar ...Petitioner

Versus

Maharashtra State Road Transport Corporation & Anr ...Respondents

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Mr. Neel Helekar i/b M/s. Sanjay Udeshi & Co. for Petitioner

Mr. G.S. Hegde, counsel for Respondents.

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CORAM: B. H. MARLAPALLE, J.

DATE OF RESERVING THE ORDER : 05.04.2005

DATE OF PRONOUNCING THE ORDER : 07.04.2005

P. C.:-

1. Heard Mr. Helekar i/b M/s. Sanjay Udeshi & Co., the learned counsel for the petitioner and Mr. Hegde, the learned counsel for the respondents Corporation. Perused the Record and Proceedings which is called for from Labour Court vide order dated 16.3.2005. This petition impugns the judgment and order of the Industrial Court at Thane rendered on 1.2.2005 in Revision Application (ULP) No.91 of 2003.

2. The present petitioner is employed with the

respondent No.1 Corporation as a conductor and he is under the charge of respondent No.2. On 7.8.1999 while he was on duty on the Corporation bus plying from Borli to Mhasale rout, the flying squad checked the said bus at Warali Phata and found that two passengers were without tickets while they were getting down from the bus and they alleged that they had already paid Rs.10/- to the conductor towards the bus fare. They further stated that the conductor returned them Rs.6/- but did not issue tickets. Secondly, a group of five passengers had paid Rs.10/- to the conductor but he had issued tickets of less denominations. Thirdly, it was alleged that the cash of Rs.12/- was found short with the conductor. On the basis of these allegations, the charge sheet dated 12.8.1999 was issued to the petitioner and he denied the charges levelled against him. Therefore, a Departmental Enquiry was ordered. The Enquiry Officer submitted his report dated 5.10.1999 and found that the charges were proved against the petitioner. He was issued a Show Cause notice dated 6.10.99 calling upon him as to why he should not be dismissed from service. It appears that he immediately moved the Labour Court by filing Complaint (ULP) No. 519 of 1999 and alongwith the same he also filed an application of interim relief. By an order dated 13.7.2000, the application for interim relief was allowed by the Labour Court and

the respondents were restrained from terminating the service of the petitioner during the pendency of the main complaint. Ultimately the complaint was allowed vide judgment and order dated 29.10.2002 by the Labour Court by directing the respondents to continue the petitioner in its employment and to impose punishment of stoppage of two increments with cumulative effect upon the petitioner.

3. Being aggrieved by the said order of the Labour Court, the respondents approached the Industrial Court in Revision Application (ULP) No.91 of 2003 and by the impugned judgment and order dated 1.2.2005, the Revision has been allowed by setting aside the judgment and order of the Labour Court referred to hereinabove. The complaint filed by the petitioner has been dismissed.

4. The learned counsel for the petitioner submitted that the Industrial Court fell in error in re-appreciating the evidence placed before the Labour Court and it acted as an Appellate Court which is not permissible. The Labour Court had exercised its discretion in holding that the punishment of dismissal proposed by the respondents would be grossly disproportionate and was not warranted. It was not permissible for the Industrial Court to upset the view taken by the Labour Court in this regard and

therefore, the order passed by the Industrial Court is unsustainable as per the petitioner.

5. Admittedly, the Labour Court agreed with the findings recorded by the Enquiry Officer holding that the charges levelled against the petitioner were duly proved. The Labour Court further held that the said findings were legal, just and proper. The Labour Court interfered with the proposed punishment on the ground that it would be grossly disproportionate. and therefore, the findings of Unfair Labour Practice against the respondents came to be recorded. The moot question in this petition is whether the Labour Court was justified, in the circumstances of the case, to interfere with the proposed punishment.

6. As per clause 6(b) of Schedule A of the Discipline and Appeal Procedure framed by the respondents as applicable to the petitioner, the punishment imposed depends upon, inter alia, the past service record as well. The record placed before the Labour Court showed that the petitioner had committed similar misconducts on 15 occasions in the past and still the Labour Court held that the past record of service of the petitioner did not appear to be bad. This finding is perverse to say the least. Secondly, the Labour Court noted that after the interim order was passed, the petitioner was in employment from

12.7.2000 and thereafter, his service record was clean. The Labour Court fell in manifest error in considering this aspect. What was challenged before the Labour Court was the Show Cause Notice proposing the punishment of dismissal from service and that was to be examined strictly in terms of the clause 6(b) of Schedule A of the Discipline and Appeal Procedure and which related to the findings recorded by the Enquiry Officer and the past record of service of the petitioner, in the present case stated that such acts of misconducts were committed by the petitioner on 15 occasions.

7. The Industrial Court rightly interfered with the view taken by the Labour Court on the quantum of punishment and allowed the Revision filed by the respondents.

8. The learned counsel for the petitioner relied upon the following decisions;-

i) Gajanan s/o. Shamrao Thakre Vs. Maharashtra State Road Transport Corporation, through its Divisional Controller, Parbhani (2000 III CLR 99).

ii) U.P. State Road Transport Corporation

& Ors. Vs. Mahesh Kumar Mishra & Ors. ([2000] 3 SCC 450).

. However, the facts in this case are different and the charges having been proved against the petitioner, it was not permissible for the Labour Court to interfere with the proposed punishment and more so on the face of the past service record. The view taken by the Industrial Court is supported by sound reasons and therefore, it does not call for interference in this petition under Article 227 of the Constitution.

9. Hence, the petition is rejected summarily.

. After the order was pronounced today, Mr. Neel Helekar, the learned counsel for the petitioner submitted an oral application to continue ad interim stay for a period of four weeks from today. Oral application is rejected.